For a full discussion of this latter phase of the subject see articles in 10 MICH. L. REV., pp 178 and 291. This right to compensation appears to rest upon the title to the office, as a kind of qualified property right, and not upon a claim for services performed, (see articles last cited, *supra*); and, at least from one point of view, it seems rather illogical that the rightful holder of such title could thus be deprived by payment to another. Perhaps the consideration of public policy involved in the reliance of the disbursing officer upon the apparent title can justify this.

RESTRICTIVE COVENANTS—ASSIGNMENT OF BENEFIT BY OPERATION OF LAW—RIGHT OF EXECUTORS OF COVENANTEE TO SUE.—In an action by the executors of a covenantee, one of whom was also the devisee of the covenantee's remaining estate, for the violation of restrictive covenants by an assignee of the covenantor, *held*, that although there could have been no recovery in either separate capacity the covenants could be enforced by the plaintiffs since they represented both the real and personal estates of the covenantee. *Ives* v. *Brown*, [1919] 2 Ch. 314.

Although the burden of a covenant of this sort is almost universally intended by the original covenanting parties to bind the land of the covenantor into whomsoever hands it comes, the same cannot be said with equal certainty as to the devolution of the benefit of the covenant. Where lots are sold in accordance with a general building plan, subject to restrictive covenants it is ordinarily intended that each of the purchasers should benefit by the agreement, in which case the right to enforce such covenants enures to the land of each purchaser and passes to his assigns. *Mann* v. *Stephens*, 15 Sim. 377; *Cole* v. *Sims*, 5 D. M. & G. 1; *dictum* in *Renals* v. *Cowlishaw* (1878), 9 Ch. D. 125, 11 Ch. D. 866. Otherwise an assignee of a portion of the covenantee's retained estate does not get the benefit of the restrictive covenants by a bare conveyance when there is nothing further to define the property for the benefit of which they were entered into. *Keates* v. *Lyon*, (1869) L. R. 4 Ch. 218; *Renals* v. *Cowlishaw, supra*. The mere additional fact that the "assigns" of the covenantee are included in the original conveyance to the covenantor, is not enough to show an intent to benefit subsequent purchasers from the covenantee. *Everett* v. *Remington*, [1892] 2 Ch. 148. In order to enable the purchaser as an assignee (such purchaser not being an assign of all that the vendor retained when he executed the conveyance containing the covenants, and that conveyance not showing that the benefit of the covenants was intended to enure to each portion of the estate so retained or to the portion of the estate of which the purchaser is the assignee) to claim the benefit of a restrictive covenant, it must at least appear that the benefit of the covenant was part of the subject-matter of the purchase. *Renals* v. *Cowlishaw, supra*. But where the original conveyance states that the covenant was entered into with the intent to benefit the purchasers, heirs and assigns of the remaining tract, the benefit of the covenant becomes annexed to each and every part of the land included and passes by assignment, whether or not its existence was known to the purchaser or formed any part of the consideration. *Rogers*

v. *Hosegood,* [1900] 2 Ch. 388. In the principal case, the devise of the covenantee's remaining estate to the plaintiff did not amount to an assignment of the benefit of the covenant under any of the tests previously considered. However, a assignee of land in connection with which restrictive covenants have been given can successfully enforce the covenants if he is also an assignee of the benefit of these covenants although their benefit has not been so definitely attached to the land as to pass by mere conveyance. *Renals* v. *Cowlishaw, supra.* The principal case holds that, since the benefit can be expressly assigned it can be assigned by operation of law and. since the covenantee could have restrained such a breach at the time of her death, as the beneficial owner of the property so retained, the same right may be exercised by those representing together both her real and personal estate. Where the executor represents the personal estate alone and the covenantee has retained none of the original estate, the former has no right of action for a breach occurring after the death of the latter. *Formby* v. *Barker,* [1903] 2 Ch. 539. Therefore, the plaintiffs in the principal case could have prevailed only in their dual capacity.

SALES—LIABILITY OF MANUFACTURER TO ONE NOT IN PRIVITY OF CONTRACT FOR INJURIOUS FOOD PRODUCTS.—The defendant packing company sold sausage to an intermediate retail dealer, who sold to the plaintiff, whose wife died from ptomaine poisoning alleged to have been caused from eating this sausage. The court, upon motion of the defendant, compelled the plaintiff to elect to proceed either upon the theory of implied warranty, or upon negligence, and he elected to stand upon negligence. Judgment below for the defendant, without submission to the jury on the ground that no negligence was shown. *Held,* that it was proper for the court to compel such election, and that while there might have been a recovery upon the basis of negligence, there could not be upon the basis of implied warranty, because there was no privity of contract. *Drury* v. *Armour & Co.,* (Ark., 1919) 216 S. W. 40.

It seems to be a well settled doctrine at the present time that the ultimate consumer may bring his action directly against the manufacturer or packer for injuries from the use of unwholesome food, though there was no contract relation between the parties. *Tomlinson* v. *Armour & Co.,* 75 N. J. L. 748; *Salmon* v. *Libby, McNeill & Libby,* 219 Ill. 421; *Roberts* v. *Annheuser Busch Brewing Assoc.,* 211 Mass. 449; *Wilson* v. *Ferguson Co.,* 214 Mass. 265; *Haley* v. *Swift & Co.,* 152 Wis. 570; *Ketterer* v. *Armour & Co.,* 200 Fed. 322; *Mazetti* v. *Armour & Co.,* 75 Wash. 622, 48 L. R. A. (N.S.) 213 (note); *Meshbesher* v. *Channellene Oil & Mfg. Co.,* 107 Minn. 104; *Watson* v. *Augusta Brewing Co.,* 124 Ga. 121. The only difficulty in the above rule is to ascertain upon what basis the action is predicated. As in the principal case, many courts have held that it cannot be based upon contract for the breach of an implied warranty, because there is no privity of contract between the consumer and the manufacturer, when a retailer intervenes. *Nelson* v. *Armour & Co.,* 76 Ark. 352; *Tomlinson* v. *Armour* & *Co., supra* (saying they will assume without deciding, that there is no implied warranty); *Roberts* v